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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14
15 **ANTONIO JIMENEZ,**

16 Petitioner,

17 v.

18 **BEN CURRY,**

19 Respondent.

C 07-3904 JF

**REPLY TO PETITIONER'S
OPPOSITION TO MOTION TO
DISMISS**

Judge: The Honorable Jeremy Fogel

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21 On April 28, 2008, Respondent filed a Motion to Dismiss on the grounds that (1) Petitioner
22 failed to properly allege or prove that he exhausted his state judicial remedies pursuant to 28
23 U.S.C. § 2254 and (2) Petitioner failed to allege how relief is proper under the Antiterrorism and
24 Effective Death Penalty Act of 1996 (AEDPA). On May 15, 2008, Petitioner filed an Opposition
25 in which he failed to address any of Respondent's procedural arguments. Instead, Petitioner set
26 forth substantive arguments including the issue of federal question, California's parole scheme,
27 and the state courts' standard for judicial review in parole suitability determinations. Because
28 Petitioner does not address why he failed to allege that he has properly exhausted his state

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1 judicial remedies, his arguments are not responsive to any of Respondent's contentions.

2 Therefore, dismissal of his Petition is warranted.

3 Notably, Petitioner attached two exhibits to his Opposition, presumably to show that he did
4 properly exhaust his state judicial remedies. However, Petitioner does not reference these
5 attached exhibits or provide any context for what they signify in his Opposition. A review of
6 these exhibits also does not further prove that Petitioner exhausted his state judicial remedies as
7 Exhibit 1 is an extension of time by the California Supreme Court without any disposition and
8 Exhibit 2 is a Orange County Superior Court Order. (See Opp'n.) To the extent that Exhibit 1
9 shows that Petitioner filed a state habeas petition, Petitioner still fails to satisfy the limited
10 burden of proof for the exhaustion requirement, given that this document is an extension of time
11 by the court's own motion and does not reference any claims that may or may not be at issue in
12 Petitioner's federal Petition. *Kim v. Villalobos*, 799 F.2d 1317, 1320 (9th Cir. 1986) (merely
13 attaching a state court petition satisfies the exhaustion requirement). Coupled with the fact that
14 Petitioner does not allege that he properly exhausted his state court remedies in either his federal
15 Petition or this instant Opposition, this Court cannot grant relief under AEDPA. 28 U.S.C. §
16 2254; *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994) ("the state's highest court must have
17 disposed of each claim on the merits"). Accordingly, this Court should dismiss the Petition.

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1 Finally, Petitioner asserts in his Opposition that "The state court's factual determination
2 regarding the crime are contrary to clearly established Supreme Court law." (Opp'n at 3-4.)
3 However, in support of this argument, Petitioner only relies on state law and does not provide
4 any Supreme Court law to support his argument. Thus, Petitioner again fails to provide any basis
5 for this Court to grant relief under AEDPA. Accordingly, the Petition should be dismissed.

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7 Dated: May 29, 2008

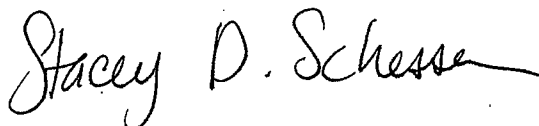
8 Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Jimenez v. Curry**

No.: **C 07-3904 JF**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 29, 2008, I served the attached

REPLY TO PETITIONER'S OPPOSITION TO MOTION TO DISMISS

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Antonio Jimenez, D-58095
Correctional Training Facility
P.O. Box 686
Soledad, CA 93960-0686
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 29, 2008, at San Francisco, California.

L. Santos

Declarant



Signature